

Text of Proposed CA Made Regulations Subject to Public Comment

Note: On June 2, 2015, the Governor's Office of Business and Economic Development ("GO-Biz") submitted new regulations (Title 10 CCR Sections 8100, 8110, 8120, 8130, and 8140) to the Office of Administrative Law ("OAL") to create a framework for operating the Made in California state labeling program ("CA Made" or "Program"). That action received OAL notice file number Z-2015-0602-07. The public comment period for the regulations closed on July 27, 2015. Since the initial public comment period, GO-Biz has determined that it is necessary to adopt a new Section 8150 to require an annual fee for licensees in the Program and to make corresponding changes to Sections 8100 and 8130. Because new Section 8150 and the related changes to Sections 8100 and 8130 introduce new subject matter into the regulations, it is considered a new rulemaking and subject to Administrative Procedure Act requirements for new rulemaking actions.

New rulemaking action notices must be published in the California Regulatory Notice Register ("CRNR") and provide a 45-day public comment period. Therefore, GO-Biz is publishing this revised Notice of Proposed Action ("NOPA") in the CRNR and posting all revised regulatory documents to the GO-Biz website and emailing those documents to the CA Made stakeholder list. The modified text of Sections 8100 and 8130 and the newly adopted text, Section 8150, will be subject to review and comment during a 45-day period beginning with publication of the NOPA in the CRNR. **The original, unmodified text, i.e., all sections and subdivisions other than Sections 8100 (k), 8130 (d)(2), and all of Section 8150, are not subject to any further public comment and will be adopted as shown, because this text has already been noticed to the public and emailed to CA Made stakeholders, published in the CRNR, and made available for comments for 45 days pursuant to OAL notice file number Z-2015-0602-07 (see CRNR dated 6/12/15).**

Changes to this regulatory text which are subject to public comment are identified by ~~double strikethrough~~ for deletions and double underline for additions.

The revised regulatory documents, including these revised proposed regulations, have been posted on GO-Biz's website located at <http://business.ca.gov/Programs/SmallBusiness.aspx>.

Article 2, of Chapter 13, of Title 10 of the California Code of Regulations is adopted to read:

Chapter 13. Governor's Office of Business and Economic Development
Article 2. Made in California Program

§ 8100. Definitions.

For purposes of this article, the following definitions shall apply:

- (a) "Applicant" means any sole proprietor, corporation, partnership, or any other business entity type applying for the CA Made license that is legally authorized to do business in California.
- (b) "Application" means the request by an applicant for the CA Made license by submitting the information as specified in the application form.
- (c) "Application form" means the form designated by GO-Biz, which shall contain the information requested in Section 8110(d) and shall be available on the website.
- (d) "CA Made label" means an authorized seal designated by GO-Biz that represents that the product is certified as CA Made pursuant to the program.
- (e) "Certification" or "certified" means a determination made by a third-party certifier that the product is in compliance with the program.
- (f) "Certification form" means the form designated by GO-Biz on the website completed by a third-party certifier stating that the product(s) meet(s) the requirements of the program.
- (g) "Certification term" means three years beginning on the date of execution of the licensing agreement.
- (h) "Direct labor cost" means salaries paid to workers who are directly involved in the production of goods or services. Direct labor costs are assignable to a specific product, cost center, or work center.
- (i) "Direct material cost" means the cost of all items such as raw materials, standard and specialized parts, and sub-assemblies required to assemble or manufacture a complete product and can be easily identified with the product.
- (j) "Familiar" means has sufficient knowledge about the supply chain of the specified product(s) to verify the source of the product components in order to perform a third-party regulatory audit as set forth in Government Code section 12098.10 et seq.
- (k) "Fee" means the annual CA Made fee charged to licensees by GO-Biz.
- (k)(l) "GO-Biz" means Governor's Office of Business and Economic Development.
- (l)(m) "Indirect labor cost" means salaries paid to workers to support the production process, but which is not directly involved in the active conversion of materials into

finished products.

| (m)(n) "Indirect material cost" means the cost of materials used in the production process, but which cannot be linked to a specific product or job.

| (n)(o) "License" means the right to use the CA Made label as permitted by GO-Biz in the licensing agreement.

| (o)(p) "Licensee" means an applicant who has entered into a licensing agreement with GO-Biz for the use of the CA Made label.

| (p)(q) "Licensing agreement" means the agreement between a licensee and GO-Biz describing the terms and conditions of using the license.

| (q)(r) "Product" means a final, recognizable good or service that has been created by a value-added process.

| (r)(s) "Program" means the CA Made program created by Government Code section 12098.10 et seq.

| (s)(t) "Research and development" means work directed toward the innovation, introduction, and improvement of products and processes.

| (t)(u) "Salary" means the amount of monetary compensation that is paid to a worker in return for work performed but does not include tips, overtime, bonuses, benefits, or other compensation of any kind.

| (u)(v) "Supply chain" means a system of organizations, people, activities, information, and resources involved in moving the product from supplier to customer.

| (v)(w) "Third-party certifier" means a qualified third-party as defined by the program who is legally and financially separate from the applicant, familiar with the product(s) being certified, and is legally authorized to do business in California.

| (w)(x) "Website" means GO-Biz's designated website.

| (x)(y) "Wholesale value" includes the direct material cost, direct labor cost, and overhead (indirect material and indirect labor costs), as described in Section 8120(c)(1).

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.

§ 8110. Application Process for CA Made Label.

- (a) Applications shall be accepted by GO-Biz on a rolling basis. GO-Biz shall review, finalize, and execute licensing agreements at the beginning of each quarter.
- (b) Applications shall be submitted online.
- (c) Applicants shall create an account profile and establish a login and password as designated on the website.
- (d) Applicants shall be asked to provide the following information on the application form:
 - (1) Contact information (legal entity business name, fictitious business name, contact name, primary business address in California, phone number, email address, and website);
 - (2) Type of business entity (sole proprietorship, corporation, limited liability company, limited partnership, general partnerships, or limited liability partnership);
 - (3) Whether the applicant is legally authorized to do business in California;
 - (4) Product(s) for which the applicant is seeking the CA Made label, categories the product(s) fall(s) under, and a brief description of the product(s);
 - (5) Uploaded photo(s) of the product(s);
 - (6) Uploaded certification form signed by a third-party certifier for the product(s) described;
 - (7) Any other information on their product(s) for marketing purposes; and,
 - (8) Business biography for website listing.
- (e) Applicant authorizes GO-Biz to use product information, product photos, and business biographies on the website and in any other CA Made marketing materials developed or approved by GO-Biz (i.e., CA Grown, Visit California, etc.).
- (f) Applicant gives GO-Biz permission to alter the style and format of marketing materials. GO-Biz shall not alter the content of the marketing materials without written permission from the applicant.
- (g) Applicant shall represent and warrant that all statements in the application are true and complete to the best of the applicant's knowledge. GO-Biz may ask an applicant to

provide supplemental information that substantiates the information provided in the application.

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.

§ 8120. Certification Process for CA Made Label.

- (a) Applicants shall provide the CA Made certification form to a third-party certifier.
- (b) Third-party certifier shall determine whether the product(s) satisfies the definitions of “Made in U.S.A.” and “substantially made” in California as set forth in the program.
- (c) The California value added share of the product(s) shall be calculated based on the California wholesale value of the product(s) and total product cost as described below.
 - (1) The California wholesale value shall be determined by summation of the following costs:
 - (A) California direct and indirect material costs; and,
 - (B) California direct and indirect labor costs.
 - (2) The total product cost shall be determined by summation of:
 - (A) California wholesale value, as described in Section 8120(c)(1);
 - (B) Direct and indirect material cost from other states; and,
 - (C) Direct and indirect labor cost from other states.
 - (3) The California value added share is equal to the California wholesale value divided by the total product cost.
 - (4) The California value added share may not include research and development.
- (d) Third-party certifiers may determine whether a product(s) satisfies the program’s requirements by reviewing the following materials from the applicant: approved budgets, invoices, and any other documents, computerized data, and other writings, whether handwritten, typewritten, printed, copied, or electronically stored to verify the origin of materials in California or the United States. This list is not a prescriptive or exhaustive list of the materials a third-party certifier must rely upon.
- (e) Third-party certifiers shall be asked to provide all of the following information as directed on the certification form:

- (1) Applicant information (legal entity business name, fictitious business name, owner name, primary business address in California, phone number, and email);
- (2) Third-party certifier information (legal entity business name, fictitious business name, address, phone number, and email);
- (3) Acknowledgement, in the form of a “yes” or “no” response, from third-party certifier that they meet the program’s requirements for third-party certifiers and a brief description of how those requirements have been met;
- (4) Name of product(s) to be certified;
- (5) Brief description of product(s) for which the applicant is seeking to obtain a CA Made license;
- (6) Description of the documents reviewed to perform the certification;
- (7) Acknowledgement, in the form of a “yes” or “no” response, that the product(s) listed in Section 8120(e)(4) meet(s) the program’s requirements for certification; and,
- (8) Dated third-party certifier signature, verifying that all content on the certification form is true and correct to the best of his/her knowledge based on the information provided by the applicant.
- (f) The applicant shall submit the certification form to GO-Biz electronically by uploading a scanned copy of the signed certification form to his/her application on the CA Made website.

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.

§ 8130. Application Review, Rejection, Approval, and Renewal Processes.

- (a) Upon receipt of an application, GO-Biz shall:
 - (1) Review the application for completeness; and,
 - (2) Notify applicant of any deficiencies if appropriate.
- (b) If an applicant intends to revise a portion of a previously submitted application form, the applicant shall either revise his/her application or withdraw the application and submit a new application. An applicant may revise or withdraw an application form at any time on the website prior to execution of a licensing agreement for the product(s).

(c) An application may be rejected if the applicant has not demonstrated the ability to comply with the requirements of the program or achieve the purposes of the program. If an application is rejected, GO-Biz shall inform the applicant of the rejection by email and the applicant's right to reapply for the license. There is no appeals process.

(d) If the application is approved, GO-Biz shall:

(1) Prepare a licensing agreement between GO-Biz and the applicant, which shall set forth the rights and limitations of use of the CA Made label.

(2) Impose the fee to the licensee based on Section 8150(c).

(d)(e) GO-Biz will fully execute the licensing agreement once GO-Biz receives payment of the fee and the licensee executes the licensing agreement. Fees are not refundable at any time.

(e)(f) Any changes to the information submitted in Section 8110(d) after the execution of a licensing agreement must be reported by the licensee to GO-Biz within 30 days by updating their account profile on the website. GO-Biz reserves the right to approve any changes to the account profile before they are published on the website. Changes that are inconsistent with the executed licensing agreement will result in termination of the licensing agreement and will require a new application.

(f)(g) Once the certification term ends, the licensing agreement expires and the license becomes invalid.

(g)(h) An applicant may renew a license by submitting a new application.

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.

§ 8140. CA Made Licensing Agreement and CA Made Label Usage.

(a) The website and the licensing agreement will identify the CA Made label that will be provided to licensees by GO-Biz.

(b) The CA Made label may be used by licensees for certified products pursuant to the rights and limitations as described in the licensing agreement, which shall include, but not be limited to:

(1) Use on the product, product containers, in point-of-purchase or other displays, and in advertising;

- (2) Not be incorporated into any business, company or product logo or label; and,
- (3) Not be its own mark or the exclusive representation of the product.
- (c) If a licensee's particular use of the CA Made label is inconsistent with the licensing agreement, GO-Biz may terminate the licensing agreement or require the licensee to discontinue that particular use of the CA Made label.

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.

§ 8150. Fee Imposition, Structure, and Management.

- (a) Upon application approval, GO-Biz shall assess a fee on all licensees.
- (b) The fee shall be determined for each licensee based on the number of products that are included in an approved application.
- (c) The fee shall be one hundred dollars (\$100.00) for the first product in an approved application and twenty-five dollars (\$25.00) for each additional product not to exceed a total of one hundred and fifty dollars (\$150.00) from a single approved application.
- (d) The fee will be imposed on an annual basis, commencing on the date when an application is approved and on the same date each following year while the license remains valid.
- (e) GO-Biz will collect and deposit all fees in the Made in California Fund.

Note: Authority cited: Sections 12098.10 and 12098.11, CA Government Code.

Reference: Sections 12098.10 and 12098.11, CA Government Code.